IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/08/2003

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.12331 OF 2003
AND
CRL.M.P.No.4198 OF 2003.

Nilamgala Finance &
Investments (P) Ltd.,
rep.by its Chairman K.Palanisamy,
2B,Rangasamy Pillai Street,
1, Thondirakadu,
Thiruchengode,
Namakkal District. ... Petitioner

-Vs-

1.The Deputy Superintendent of Police,
EOW, Erode District.

2.The Inspector of Police,
Pallipalayam. ... Respondents

(Second respondent brought on record
as per the order dated 12.8.2003
made in the Memo. dated 16.6.2003)

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

!For petitioner : Mr.B.Kumar, senior counsel
for Mr.M.Santhanaraman

^For respondents : Mr.A.N.Thambidurai,
Govt.Advocate (crl.side)

:O R D E R
The above criminal original petition has been filed under Section 4 82 of the Code of Criminal Procedure praying to direct the second respondent to investigate the complaint given by the petitioner company in Cr.No.876/2001 on his file and file a final report in accordance with the result of such investigation.

2. The case of the petitioner is that the petitioner company was incorporated in the year 1997 and at the time of incorporation, the shareholders contributed a sum of Rs.25 lakhs as its capital and later the capital was increased to Rs.31 lakhs; that one of the employees of the petitioner company by name Arumugham, in collusion with two others including a finance firm in Erode, had misused the fixed deposit receipts signed and kept in the office of the petitioner company and absconded and hence the petitioner company lodged a complaint before the Pallipalayam Police Station in Cr.No.876 of 2001 for the offence punishable under Section 420 IPC and since after investigation, the said Police referred the case as `civil in nature', the petitioner filed a protest petition before the Judicial Magistrate, Tiruchengode in Crl.M.P.No.1817 of 2003 and the learned Magistrate, by his order dated 4.4.2003, has directed the second respondent Police to take up the investigation afresh and take it to its logical conclusion and prosecute the culprits and now the investigation is pending.

3. The further case of the petitioner is that one R.Prakash, who is a relative of the said Arumugham, has lodged a complaint against the petitioner company before the first respondent in Cr.No.26/2002 for the offences punishable under Sections 420 and 409 IPC on allegation that the petitioner company having received the fixed deposit, has not repaid the same after maturity. The petitioner would submit that the said Arumugham and the persons now claiming as fixed deposit holders have colluded with each other in a conspiracy along with the financiers, to make a huge claim against the petitioner company on the basis of the fixed deposit receipts abstracted from the company; that most of the persons who are now claiming as deposit holders are the close relatives of the said Arumugham; that only a deep routed, serious and persistent investigation by the Police would reveal the underlying policy as well as the design to cheat the petitioner company; that pending such an investigation in Cr.No.876/2001, there could not be either investigation or case being filed at the instance of persons holding such forged and false fixed deposit receipts. On such allegations, the petitioner would pray for the relief extracted supra further praying to stay the further proceedings in Cr.No.26/2002 on the file of the first respondent till the completion of the investigation in Cr.No.876/2001 by the second respondent and in accordance with the result of such investigation.

4. The learned Government Advocate on the criminal side would submit that earlier, the petitioner's complaint was referred as `civil in nature' by the second respondent Police and thereafter based on the direction given by the learned Judicial Magistrate, Tiruchengode, the investigation was taken up by a different Inspector of Police, deserting the earlier Sub Inspector of Police, who conducted a faulty investigation, and now the investigation is going on in the complaint lodged by the petitioner company.

5. Considering all the facts and circumstances of the case, this Court is able to find sufficient force in the pleadings and arguments submitted on the part of the petitioner. When the case of the petitioner is one of their employees has played fraud on them and misused the fixed deposit receipts which were entrusted with him and only making use of the same, not only the complainant in Cr.No.26/2002 but also some other such so-called

depositors, are making false claims, this Court is of the view that without completing the investigation in the manner expected by law in the complaint lodged by the petitioner, it would be difficult to find out as to who are all the genuine depositors and who are making false claims against the petitioner company. Therefore, the prayer sought for on the part of the petitioner company could very well be answered in the affirmative and hence the following order:

In result,
(i)the above criminal original petition is allowed.
(ii)The second respondent Police are directed to complete the investigation in Cr.No.876/2001 on their file in the manner known to law, and file the final report before the jurisdiction Court as expeditiously as possible.
(iii)The Investigation in Cr.No.26/2002 on the file of the first respondent is stayed till the filing of the final report in Cr.No.876/200 1 on the file of the second respondent.
Consequently, Crl.M.P.No.4198 of 2003 is closed.

Index: Yes
Internet: Yes

Rao

To
1.The Deputy Superintendent of Police,
EOW, Erode District.

2.The Inspector of Police,
Pallipalayam.

3.The Judicial Magistrate,
Tiruchengode.

4.The Judicial Magistrate No.II,
Sankari.

5.The Additional District Judge-cum-
Chief Judicial Magistrate,
Erode.

6.The Public Prosecutor,
High Court, Madras.